

USSN: 10/527,767  
Attorney Docket: I-2002.016 US  
Response to Office Action of August 8, 2006

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#### REMARKS

Applicants hereby confirm the election of Group I, claims 1 and 4-10 for examination in this application. The remaining claims, claims 2 and 3, are presently canceled without prejudice or disclaimer of this subject matter thereof.

The Examiner has rejected claims 1 and 4-10 under 35 U.S.C. § 112, first paragraph, for not complying with the enablement requirement. The Examiner has stated that is not clear that the Deposits of CAstV-2 under accession number I-2932 at the CNCM meet the criteria set forth MPEP 608/01 (p)(C), items 1-3.

In reply to the rejection of 35 U.S.C. § 112, first paragraph, Applicants' attorney hereby declares:

I, William M. Blackstone, attorney for Applicants, affirm on information and belief that chicken astrovirus type 2 (CAstV-2) has been deposited under the requirements of the Budapest Treaty with the International Depository Authority at the Collection Nationale de Cultures de Microorganisms of the Institute Pasteur, 25, Rue du Docteur Roux, F-75724 Paris CEDEX 15 FRANCE, on September 13, 2002, and has been granted accession number I-2932. All restrictions on availability to the public of the material will be irrevocably removed on the granting of a patent and the material has been deposited under the conditions that ensure access to the material will be available during pendency of the patent application to one determine by the Commissioner to be entitled thereto under 35 CFR 1.14 and 35 U.S.C. § 122. Further, it is believed that the deposited material will be stored at the CNCM with all necessary care to keep it viable and uncontaminated for at least five years following the most recent request for the provision of a sample and, in any case, at least thirty years after the date of the deposit or

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for the enforceable life of the patent, whichever is longer.

On behalf of Applicants and Assignee, I acknowledge the duty to replace the deposit should the depository be unable to furnish a sample when requested due to the condition of the deposit.

I further declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the instant patent application or any patent issuing thereon.

Submitted herewith is a copy of the Budapest Treaty Deposit Receipt from the CNCM and a copy of the Viability Statement indicating that the microorganism deposited was viable.

In paragraph two on page three of the Specification it is disclosed that the chicken astrovirus type 2 of the present invention was deposited under accession number I-2932 at the CNCM.

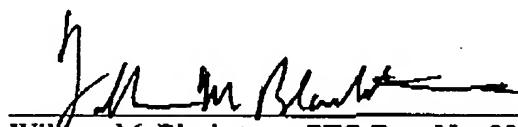
In view of the above it is believed that the claims 1 and 4-10 are in condition for allowance. Favorable action is solicited. Should the Examiner consider that a conference would be helpful in advancing the prosecution of this application, she is invited to telephone Applicants' attorney at the number below.

Applicants do not believe that any other fee is due in connection with this filing. If, however, Applicants do owe any such fee(s), the Commissioner is hereby authorized to charge the fee(s) to Deposit Account No. 02-2334.

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**In addition, if there is ever any other fee deficiency or overpayment under 37 C.F.R. §1.16 or 1.17 in connection with this patent application, the Commissioner is hereby authorized to charge such deficiency or credit overpayment to Deposit Account No. 02-2334.**

Respectfully submitted,

  
\_\_\_\_\_  
**William M. Blackstone, PTO Reg. No. 29,772**  
**Chief Patent Counsel**  
**Intervet Inc.**  
**Patent Department**  
**P.O. Box 318**  
**29160 Intervet Lane**  
**Millsboro, DE 19966**  
**(302) 934-4317 (tel)**  
**(302) 934-4305 (fax).**

WMB:dap

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BUDAPEST TREATY ON THE INTERNATIONAL  
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS  
FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

To :

**AKZO NOBEL N.V.**  
Velperweg 76  
6824 BM ARNHEM  
The Netherlands

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT  
Issued pursuant to Rule 7.1 by the  
INTERNATIONAL DEPOSITORY AUTHORITY  
identified at the bottom of this page

NAME AND ADDRESS  
OF DEPOSITOR

**I. IDENTIFICATION OF THE MICROORGANISM**

Identification reference given by the  
DEPOSITOR :

**CHICKEN ASTROVIRUS VDU/AS2**

Accession number given by the  
INTERNATIONAL DEPOSITORY AUTHORITY :

**I - 2932**

**II. SCIENTIFIC DESCRIPTION AND/OR PROPOSED TAXONOMIC DESIGNATION**

The microorganism identified under I above was accompanied by :

a scientific description  
 a proposed taxonomic designation

(Mark with a cross where applicable)

**III. RECEIPT AND ACCEPTANCE**

This International Depository Authority accepts the microorganism identified under I above,  
which was received by it on **13 September 2002** (date of the original deposit)<sup>1</sup>

**IV. RECEIPT OF REQUEST FOR CONVERSION**

If the microorganism identified under I above was received by this International  
Depository Authority on **(date of the original deposit)** and  
a request to convert the original deposit to a deposit under the Budapest Treaty  
was received by it on **(date of receipt of request for conversion)**

**V. INTERNATIONAL DEPOSITORY AUTHORITY**

Name : **CNCM**  
Collection Nationale  
de Cultures de Microorganismes  
Address : **INSTITUT PASTEUR**  
28, Rue du Docteur Roux  
F-75724 PARIS CEDEX 15

Signature(s) of person(s) having the power  
to represent the International Depository  
Authority or of authorized official(s) :

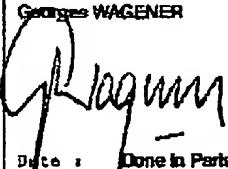
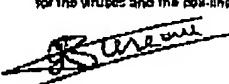
**Georges WAGENER**

Date : **31 January 2003**

<sup>1</sup> Where Rule 6.6(d) applies, such date is the date on which the status of international  
depository authority was acquired.

IV. CONDITIONS UNDER WHICH THE VIABILITY TEST HAS BEEN PERFORMED<sup>4</sup>

## V. INTERNATIONAL DEPOSITORY AUTHORITY

Name :	<b>CNCM</b> Collection Nationale de Cultures de Microorganismes	Signature(s) of person(s) having the power to represent the International Depository Authority or of authorized official(s) :
Address :	<b>INSTITUT PASTEUR</b> 25, Rue du Docteur Roux 75724 PARIS CEDEX 15 FRANCE	Georges WAGENER  Jean-François BUREAU, Scientific Advisor for the viruses and the cell-lines 
Date : Done in Paris on 31 January 2003		

<sup>4</sup> Fill in if the information has been requested and if the results of the test were negative.

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BUDAPEST TREATY ON THE INTERNATIONAL  
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS  
FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

TO :

Dr. William BAXENDALE  
Intervet UK Ltd  
The Elms  
Thicket Road  
Houghton, Huntingdon  
Cambs PE28 2BQ - UK

NAME AND ADDRESS OF THE PARTY  
TO WHOM THE VIABILITY STATEMENT  
IS ISSUED

VIABILITY STATEMENT  
Issued pursuant to Rule 10.2 by the  
INTERNATIONAL DEPOSITORY AUTHORITY  
identified on the following page

I. DEPOSITOR	II. IDENTIFICATION OF THE MICROORGANISM		
Name : AKZO NOBEL N.V.  Address : Velperweg 76 6824 BM ARHHEM The Netherlands	Accession number given by the INTERNATIONAL DEPOSITORY AUTHORITY :  I - 2932  Date of the deposit or of the transfer <sup>1</sup> :  13 September 2002		
III. VIABILITY STATEMENT			
<p>The viability of the microorganism identified under II above was tested on 18 September 2002<sup>2</sup>. On that date, the said microorganism was</p> <table style="margin-left: 40px;"> <tr> <td><input checked="" type="checkbox"/> <sup>3</sup> viable</td> </tr> <tr> <td><input type="checkbox"/> no longer viable</td> </tr> </table>		<input checked="" type="checkbox"/> <sup>3</sup> viable	<input type="checkbox"/> no longer viable
<input checked="" type="checkbox"/> <sup>3</sup> viable			
<input type="checkbox"/> no longer viable			

1 Indicate the date of the original deposit or, where a new deposit or a transfer has been made, the most recent relevant date (date of the new deposit or date of the transfer).

2 In the cases referred to in Rule 10.2 (a)(ii) and (iii), refer to the most recent viability test.

3 Mark with a cross the applicable box.